



presently are parties to Civil Action No. 4:17-cv-00584-RP-ML, *PNC Bank, N.A., et al. v. 2013 Travis Oak Creek GP, LLC, 2013 Travis Oak Creek Developer, Inc., Chula Investments, Ltd. and Rene O. Campos* (the “Pending, Related Western District Case”). The Pending, Related Western District Case involves the same and/or a substantial overlap in relevant subject matters and transactions that are the subject of the removed State Court Action, and all of the parties to the removed State Court Action (except for one Defendant) already are parties to the Pending, Related Western District Case.

4. The State Court Action is properly removable to federal court pursuant to 28 U.S.C. §§ 1332 and 1441. The Court has, may and should exercise diversity jurisdiction over the State Court Action because it is a civil action between citizens of different states, in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and the Removing Defendants have satisfied the procedural requirements for removal. It is apparent from the face of the Original Petition that the amount in controversy in the State Court Action exceeds \$1 million (see paragraph 9 of the Original Petition). At the time this action was filed and at all times since, Plaintiff PNC Bank, N.A. was and is a federally chartered bank with its principal place of business in Pittsburgh, Pennsylvania, where Plaintiff is a citizen for jurisdictional purposes. Plaintiff previously has judicially admitted, in the United States District Court for the Western District of Texas, that it is a citizen of Pennsylvania. At the time the State Court Action was filed and at all times since, all of the Removing Defendants have been citizens of Texas.

5. Removing Defendants are mindful of 28 U.S.C. § 1441(b)(2) and show that it does not preclude this removal because no Defendant has been served as of the time of this removal. *See, e.g., Reynolds v. Personal Representative of the Estate of Christopher Johnson*, 139 F. Supp. 3d 838, 841-42 (W.D. Tex. 2015).

6. Additionally, there is no reasonable possibility that Plaintiff can recover the relief it is seeking in the State Court Action. Plaintiff's suit in the State Court Action arises out of the same transactions and occurrences that are the subject matter of its claims in the Pending, Related Western District Case – which is the first-filed suit between and among all of the parties to the State Court Action (except for Defendant Eureka Multi-Family Group, L.P.) – and thus it must be pleaded and adjudicated in the Pending, Related Western District Case, where the issues already have been joined. The State Court Action would be subject to stay or abatement, and ultimately *res judicata*.<sup>1</sup>

7. Pursuant to 28 U.S.C. § 1446(a) and the Court's local rules, copies of all process, pleadings, orders and other documents on file with the District Court of Travis County, if any, are attached hereto (*See Exhibit A*). The docket sheet was unobtainable as of the filing of this Notice and **Exhibit A** comprises the sole filing in the State Court Action-- Plaintiff's Original Petition.

8. This Notice of Removal is timely and properly filed pursuant to 28 U.S.C. § 1446(b) because it is being filed within 30 days following receipt of Plaintiff's Original Petition by the Removing Defendants in the State Court Action. All of the Removing Defendants – who are all of the defendants in the removed State Court Action -- consent to and join in this removal.

9. Pursuant to 28 U.S.C. § 1446(a) and the Court's local rules, a Certificate of Interested Parties is attached hereto (*See Exhibit B*).

10. A copy of this Notice of Removal is being filed with the Clerk of the District Court of Travis County, as required by law. Written notice of removal also is being given to Plaintiff PNC Bank, N.A., by and through its attorneys of record.

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<sup>1</sup> The State Court Action is a suit to enforce a written guaranty agreement in which the parties agreed that exclusive jurisdiction with respect to any action by or against a party to the agreement rests in the state and federal courts in Austin, Travis County, Texas.

11. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

12. Removing Defendants respectfully request that this case be assigned to Judge Robert L. Pitman given the relationship of the State Court Action and the Pending, Related Western District Case that is detailed above.

WHEREFORE, the Removing Defendants pray that the State Court Action be removed to the United States District Court for the Western District of Texas, that the State Court proceed no further, and that the Removing Defendants be awarded any other relief to which they may be entitled.

Dated: November 14, 2017

Respectfully submitted,

/s/ Kenneth B. Chaiken

Kenneth B. Chaiken

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**ATTORNEYS FOR  
REMOVING DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served on all counsel of record via the Court's electronic filing system on this 14<sup>th</sup> day of November 2017.

/s/ Kenneth B. Chaiken

Kenneth B. Chaiken

JS 44 (Rev. 06/17)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

PNC Bank, N.A.

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Rene O. Campos; 2013 Travis Oak Creek Developer, Inc., Chula Investments, Ltd.; and Eureka Multifamily Group, L.P.

County of Residence of First Listed Defendant Travis  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Kenneth B. Chaiken, Chaiken & Chaiken, P.C.  
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Plano TX 75024

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                                   | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC Sections 1332, 1441 and 1446

Brief description of cause:

Suit for breach of guaranty

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

&gt; \$1 million

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Robert L. Pitman

DOCKET NUMBER 4:17-cv-00584-RP-ML

DATE

11/14/2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE